



INTERIOR BOARD OF INDIAN APPEALS

Estate of Julius Benter (Bender)

1 IBIA 59 (01/12/1971)

Denying reconsideration of:

1 IBIA 24

Judicial review of this case:

Dismissed, No. 71-1559 (9th Cir. Feb. 18, 1972)

Dismissed upon stipulation, *Brazie v. Morton*, No. S-2360 (E.D. Cal. Dec. 28, 1972)

Related Board cases:

15 IBIA 88

17 IBIA 86

Estate of Julius Benter
Decided January 12, 1971

Syllabus

IBIA 70-5 Supp.

Indian Lands: Descent and Distribution: Appeals

Although 25 CFR 15 does not include any provision for rehearing after decision on appeal, the Board has inherent power to rectify manifest error.

Indian Lands: Descent and Distribution: Appeals

A rehearing after entry of a decision on appeal will not be granted except upon a showing of manifest error in such decision.

Indian Lands: Descent and Distribution: Appeals: Departmental Decisions

Under the delegation of authority by the Secretary to the Director of the Office of Hearings and Appeals, 35 F.R. 12081 (July 28, 1970), a decision by the Board of Indian Appeals becomes a Departmental decision, and upon the issuance of such decision the parties have exhausted their administrative remedies.



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ESTATE OF JULIUS BENTER	:	
	:	Order Denying Petition for Reconsideration
Redding Allottee No. 551,	:	
Deceased	:	
Probate No. F-88-69	:	IBIA 70-5 Supp.

This matter comes on for consideration upon the filing herein of two petitions for rehearing before the Board of Indian Appeals. That of George B. Brazie was filed December 21, 1970 and that of Clara Wicks, et al, was filed December 24, 1970. The petitioners separately seek reconsideration of the Board's decision of November 17, 1970 which in turn affirmed the examiner's order denying separate petitions for rehearing at the trial level in the probate of the estate of this decedent.

There is no provision in Part 15 of Title 25 of the Code of Federal Regulations for the reconsideration of a final appellate decision, although the Board of necessity has inherent power to rectify manifest error in any of its decisions.

The petitions filed herein taken together fail to show manifest error in the decision of November 17, 1970 and said petitions should therefore be denied.

It is noted that the petitions are directed to the Board, or in the alternative, to the Director of the Bureau of Indian Affairs or to the Secretary of the Interior and in this the petitions are in error since they entirely disregard the delegation of authority appearing in 35 F.R. 12081 under which it was stated in the Estate of John J. Akers, 1 IBIA 8 (September 9, 1970),

Under the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, it is determined that this matter has been properly conducted, decided, and reviewed, and this decision is final for the Department. (Emphasis supplied).

Since the Regulations 25 CFR 15 make no provision for reconsideration, the decision of November 17, 1970 constitutes the final administrative remedy available to the petitioners.

IT IS ORDERED That, the petitions for reconsideration, designated as petitions for rehearing, shall be and the same are hereby denied and the continuing mandate contained in the decision of November 17, 1970 directing the examiner to order immediate distribution of the assets of the estate is reaffirmed.

//original signed
David J. McKee, Chairman
Board of Indian Appeals

Concur:

//original signed
James M. Day, Director
Office of Hearings and Appeals

Dated: January 12, 1971